

REMARKS

The Examiner, in paragraph 2 of the Office Action has rejected claims 1, 2, 4, 6 and 12 under 35 USC §102(b) as being anticipated by Fink et al. (5,715,968). Fink discloses a *shopping basket* with two inwardly indented longitudinal sides. Fink also discloses a *single* two-piece handle of a common elevation connected to opposite ends of the shopping basket along the center-line, each piece being foldable to each side to expose the open top of the shopping basket.

Fink does not disclose a tool box as disclosed and claimed in this application, namely an ergonomically shaped tool box with a *single indented longitudinal side* and a first handle and a *second* handle, the second handle being *offset* and disposed at an elevation *lower* than the first handle.

Claim 1 has been amended to specify the combination of a single indented side, a first handle disposed at a higher elevation and a second handle disposed at a lower elevation than the first handle, and *laterally offset* from the first handle. Fink does not disclose this construction and accordingly the provisions of 35 USC §102(b) do not apply to amended claim 1. Similarly, since claims 2, 4, 6 and 12 are dependent upon amended claim 1, dependent claims 2, 4, 6 and 12 are also not offensive under 35 USC §102(b).

The significance of two handles and the lower handle being laterally offset in relation to the upper handle is explained in the specification at page 7, lines 22 to 36 and is illustrated in Figure 2.

The Examiner in paragraph 3 of the Office Action rejected claims 1, 2, 4 and 6 under 35 USC §102(b) as being anticipated by Flink (6,039,205). Flink discloses a *shopping basket* with a concave longitudinal side and a convex longitudinal opposite side. Flink also discloses a *single* handle, which is centrally disposed in the interior of the hollow basket. It is supported by a structure which extends upwardly from the central area of the base of the basket.

Flink does not disclose a *first* handle disposed at an upper elevation, and a *second* handle disposed at a lower elevation and *laterally offset*, from the first handle.

As mentioned above in relation to Fink, et al., claim 1 has been amended to specify the combination of an indented side, a first handle disposed at a higher elevation and a second handle disposed at a lower elevation than the first handle, and *laterally offset* from the first

handle. With the revisions that have been made to claim 1, amended claim 1 does not read upon the disclosure of Flink and accordingly the prohibition under 35 USC §102(b) does not apply. Similarly, dependent claims 2, 4 and 6, which depend on amended claim 1, are not objectionable under 35 USC §102(b).

The Examiner has rejected claims 3, 5, 7 to 14 and 16 to 18, under 35 USC §103(a) as being unpatentable over Fink et al. in view of Peebles (3,463,353) or Ernst et al. (4,125,207).

Peebles does *not* disclose an indented longitudinal side. Peebles discloses a nesting container assembly with *straight sides* and two handles 32 disposed at different elevations. However, the two handles are disposed *directly above* one another in a central area of the nesting container. The lower handle is *not laterally offset* in relation to the upper handle.

Ernst et al. purportedly disclose two handles. However, on close reading of Ernst et al., it is evident that the "lower handle" 26 is in fact a pair of nozzles which can be swivelled to each side and forward to dispense fluid (see col. 2, lines 65 to 68, col. 3, lines 27 to 31, and Figure 3).

There is no teaching in either Fink et al., Peebles or Ernst et al., directing a person skilled in the art to combine the teachings of the respective patents. Furthermore, since Peebles does not show either an indented longitudinal side or a lower handle which is laterally offset in relation to the upper handle, and Ernst et al. do not show two handles, it is submitted that claim 1 as amended patentably distinguishes Fink et al. and Peebles or Ernst et al. under the provisions of 35 USC §103(a). Furthermore, claims 3, 5, 7 to 14 and 16 to 18, by being dependent on amended claim 1, patentably distinguish these citations.

Finally, the Examiner rejected claim 15 under 35 USC 103(a) in view of the cited references and further in view of Official Notice. The applicant is not aware of "the old and conventional practice of providing a box for holding a flexible rod", particularly in connection with a tool box, and respectfully requests that the Examiner cite a prior patent or publication which shows such an arrangement.

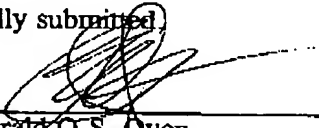
The applicant has added new independent claim 19, and dependent claim 20 directed to a specific embodiment of the ergonomic tool box. It is submitted that these two new claims also distinguish the prior art.

It is submitted that the amended claims are allowable over the prior art and accordingly allowance at an early date is respectfully solicited.

While it is believed that this application is now in condition for allowance, should the Examiner have any lingering concerns about the allowability of the application, and it would be convenient to deal with such objections or concerns over the telephone, the Examiner is invited to telephone the applicants' patent attorney at the telephone number listed below.

Respectfully submitted,

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